

March 14, 2006

Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 12th St., SW
Washington, D.C. 20554

Re: Ex Parte Presentation,
WC Docket No. 04-440

Dear Ms. Dortch:

On March 13 and 14, Vonya McCann and I met with Scott Bergmann of Commissioner Adelstein's office, Ian Dillner of Chairman Martin's office, and Jessica Rosenworcel of Commissioner Copps' office, to discuss Verizon's petition for forbearance from Title II and Computer Inquiry rules with respect to its broadband services. Sprint Nextel urged rejection of Verizon's petition for several reasons:

The scope of Verizon's petition remains unclear. Even with the additional information provided by Verizon on February 7, 2006 (a scant 6 weeks before expiration of the deadline for action on the forbearance petition), it remains unclear precisely what services Verizon is requesting be deregulated, or which specific rules and regulations it wants lifted. Verizon's attempt to bifurcate TDM-based from packet-switched and optical networking facilities is meaningless given the fact that many customers (including Sprint Nextel) simply purchase basic transmission pipes from Verizon, and add their own electronics.

The petition does not meet Section 10 forbearance standards. Verizon has failed to demonstrate that forbearance is not necessary to ensure just and reasonable charges and practices; to protect consumers; or to promote competitive market conditions. To the contrary, because Verizon retains market power in the provision of special access services, it is likely that grant of the requested relief will result in unjust, unreasonable and discriminatory rates, terms and conditions, thereby harming consumers and competition. In this case, forbearance is not in the public interest.

The requested relief is contrary to other recent decisions. Both the FCC and the Dept. of Justice have found that the special access market (particularly for the last-mile connection to the customer's premise) is not fully competitive, and that safeguards remain necessary to ensure that Verizon does not engage in anticompetitive activities. In the *Wireline Broadband Internet Access Order*, the FCC explicitly declined to lift Title II regulation of stand-alone ATM service, frame relay, gigabit Ethernet service, and other high-capacity special access services -- some of the very services referenced in Verizon's

“telecommunications services under the statutory definition.”¹ This order was consistent with other recent FCC orders, including the *Verizon-MCI Merger Order*, in which the Commission concluded that the merger “...absent appropriate remedies, is likely to result in anticompetitive effects for wholesale special access services;”² and the *Omaha Forbearance Order*, in which the FCC held that Qwest continued to be dominant in the provision of enterprise services such as special access high capacity loops, even in the presence of an intermodal competitor in other market segments.³ Furthermore, the Commission has “expressed skepticism that it would ever be appropriate to forbear from applying” sections 201 and 202, and placed the burden of proof on the petitioner to make the forbearance showing⁴ – a showing which Verizon certainly has not met in the instant filing.

Verizon retains significant market power in the provision of special access services of all capacities. Sprint Nextel obtains the majority of its special access “last mile” circuits from the RBOCs, and the two largest AAV vendors (legacy AT&T and legacy MCI) are no longer independent, thereby adding to Verizon’s and the new AT&T’s overall special access market share. Verizon remains the only carrier with near-ubiquitous terminations within its operating regions, in part because of the considerable time and resources required for an alternative vendor to negotiate rights of way and to install its own facilities. Even where alternative access facilities may currently be available, migration from Verizon to an AAV is difficult, and often uneconomic, because of existing term contracts with high early termination fees and burdensome migration procedures instituted by Verizon and other RBOCs. Deregulation of special access services would enable Verizon to raise wholesale prices to its captive long distance and wireless carrier customers, while manipulating retail prices to end users to levels which its competitors cannot readily match.

I request that this letter, which is being filed electronically, be placed in the file for the above-captioned proceeding.

Please contact me at (202) 585-1915 with any questions.

Sincerely,



Norina Moy

Director, Government Affairs-Wireline

¹ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853, 14860-61 (para. 9) (2005).

² *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433 (para. 24) (2005).

³ *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. Section 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, *Memorandum Opinion and Order* released Dec. 2, 2005, para. 50.

⁴ *Petition of SBC Communications Inc. for Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services*, 20 FCC Rcd 9361, 9368 (para.17) (2005).

c: Scott Bergmann
 Ian Dillner
 Jessica Rosenworcel